

MCF comments and questions on draft Initial Conditions

<b>Current provision</b>	<b>New provision</b>	<b>Comment / question</b>	<b>Proposed resolution</b>
Definitions	Part 1 - Schedule to Notification	<p>Incident Guidelines (footnote 3) – these were published on 1 August 2011</p> <p>Intermediary Agreement – query if definition needed (see comments on Common Operational Procedures agreement)</p> <p>Postal Common Operational Procedure Agreement – will need to reflect situation but intention is that it will be the modified version. Cross reference incorrect.</p>	<p>Update footnote</p> <p>Delete if not needed</p> <p>Delete “in accordance with paragraph 3 below”.</p>
C1 - Definitions	Annex 1 – Definition of Controlled Service	<p>Does OFCOM intend to determine the market / segment into which Controlled Services fall prior to 1 October 2011 (paragraph b)?</p> <p>Not clear why certain services are to be treated in the same manner as other services (i.e. 120 and 700 treated same as 70 and residue and direct 1400 service treated the same)</p> <p>Why do ASTL Large Letter (1<sup>st</sup> and 2<sup>nd</sup> class – numbers 12 and 13) only remain controlled and USO services until 31 March 2012?</p>	<p>OFCOM to confirm.</p> <p>OFCOM to explain.</p> <p>OFCOM to explain.</p>
C2.2	DUSP 1.2(ii) and (iii)	The new wording reflects the wording of the Directive i.e. registered items service and insured items service are listed separately. The previous wording was “a	OFCOM to clarify

		registered and an insured service”, implying that the USO must be fulfilled by a single service and Royal Mail did this with RMSD. The new wording allows for two services to provide the USO.	
C2.2	DUSP 1.2(vi)	Only a very limited number of bulk services are mandated to be provided pursuant to the USO and they should be specified, so that Royal Mail cannot voluntarily extend the scope.	Add “as identified in DUSP 1.3 (b)”?
C2.5	DUSP 1.5	Is industrial action, which prevents fulfilment of the required deliver frequency, to be treated as an “emergency”, as contemplated by s33(3) PSA 2011? If not, under what provision is industrial action not to be taken as a failure to deliver the USO?	OFCOM to confirm.
C4.2-4 – for USO services	DUSP 5.1	“between that date and that delivery to the addressee” – original wording of 1st Directive but “the delivery” would be better.	Change to correct English.
C4 (C2 OLO licence)	CP 1.2	<p>This is not applicable to Other Regulator Postal Operators (<b>ORPOs</b>) whose only equivalent provision (Condition 2 OLO licence) is to collect and deliver “within a reasonable time” and provide an annual report on performance against performance targets.</p> <p>This is not applicable to unlicensed services.</p> <p>Reference to use of “reasonable endeavours – (a) to collect postal packets – ... (ii) on a regular and reasonable basis from any post office letter box or other access point it uses” has been removed. What is the reason for this?</p>	<p>Unnecessary to include any form of condition 2 ORPO provision in CP conditions as market forces drive the required service levels.</p> <p>OFCOM to explain removal of obligation to collect from letter boxes and other access points.</p>

C2 OLO licence	CP 3	<p>Performance targets are largely bespoke and often not guaranteed so measurement is very difficult. Comparison of disparate standards is also of little use. We would propose the removal of the requirement to report compliance.</p> <p>In any event, the s.37 PSA 2011 information provision obligation applies only to the USP.</p> <p>We would propose that it be removed in the exercise of the duty under s.6(1) Communications Act 2003, on the grounds it is unnecessary.</p>	Propose to remove this requirement which provides no meaningful consumer protection.
C4.18	CP 2	Currently no schemes made other than by Royal Mail.	
C5.3	DUSP 6.2	Why has the requirement to publish complaint handling standards been omitted?	OFCOM to explain.
C6	DUSP 2	<p>Clearly continuing services for the blind and partially sighted is an important protection, and is Requirement 6 of section 31 PSA 2011. As section[s 40 and] 41 PSA 2000 are revoked by Schedule 12, paragraph 3 PSA 2011, is the direction issued under it still valid if the power has since been removed?</p> <p>Do Directions to Postcomm bind OFCOM?</p> <p>Reference to s. 40 (Directors' remuneration) appears to be incorrect.</p>	
-	CP 4.4	<p>How will any decision relating to a C7 dispensation relating to packets over 1kg or 150k items per year be dealt with?</p> <p>Clearly, we have voiced a number of serious concerns with the Royal Mail request.</p>	OFCOM to confirm process.
C7.2	CP 4.5	Parcelforce is a business division of Royal Mail Group Limited. There are concerns about cost transparency and accounting separation. It is appropriate that only historical Parcelforce services (provided as at 1 April 2006) and those which are substantially similar should be exempt the notification and publication requirements.	OFCOM to resist any proposal that any Parcelforce service should

			be exempted from the CP 4 provisions.
C7.5(a)	CP 4.8	Unclear why identifying the relevant access paired service should be a transitory condition which disappears when the first universal postal service order under s.30 comes into effect (Schedule 9, paragraph 5(4)). Will such an order not be made with effect from 1 October?	<p>OFCOM to explain why the obligation to confirm the Reference Service is only included as a transitory provision – T 4.35.</p> <p>OFCOM to explain the timing of the first universal postal service order.</p>
C7.5(b)-(d)	CP 4.9	It is not clear what happens to the timing of publication if the Royal Mail “Formal Statement” (submitted under CP 4.8) asserts that there is no market power but OFCOM then disagrees. Is it that the publication must satisfy both normal <u>and</u> “no market power” publication requirements and, therefore, require 3 months notice?	OFCOM to clarify position.
C7.7(a) / C7.7(b)	CP 4.11/4.12	<p>“Postal facilities” is a well known definition. Not immediately clear where “postal network” is defined: it is in s38(3) PSA 2011 and defined as all systems and resources used to comply with universal service obligation.</p> <p>While the list reproduces the current C7 list, there are a number of differences from</p>	Suggest to list cross-reference to this “postal network” definition in the

		<p>the information to be provided under USPA 1.2 (C9.1.2) for access services. The additional conditions which are required for access services are minimum volumes; addressing and presentation requirements; compensation; IT interface requirements and security measures to be observed.</p> <p>While the reference to “postcode districts” is contained in the current condition, there are no services which are priced by reference to postcode districts. It would be more relevant to refer to split by postcode sectors or zonal classification of postcode sectors.</p>	<p>Annex of statutorily defined terms.</p> <p>In the interests of securing equivalence, these other criteria should be published for retail services.</p>
C7.7(b)		Removal of requirement to submit to Postcomm details of contracts. Ofcom claims the requirement is unnecessary because it has information gathering powers but will it use these powers to ensure that it obtains this information? See also C14.2(e), C18, C19 and C21.	OFCOM to explain position.
C8 (C3 OLO licence)	E 1 & E/A1	We are pleased to note that the scope has been confined to regulated postal services.	
C9.Part I.1	USPA 1.1	Postcomm has not made any determination under C9.II so the rest of the proposed provision is unnecessary.	Delete after USPA [2.1], unless Postcomm is expected to issue an access code determination before 1 October 2011.
C9.I.2	USPA 1.2	What is the effect of the current proposal by Postcomm to suspend this obligation to provide terms in respect of access other than at inward mail centres?	OFCOM to clarify process

		Please see comment on postcode districts and the terms to be provided in comment on CP 4.11/4.12 above.	for “agreeing in writing” to suspend this condition, should Postcomm decide to suspend the obligation?
C9.I.4	USPA 1.4	<p>There is a reference to Part 2 of Schedule 3 of PSA 2011 but this has no effect unless OFCOM has specified the manner in which an access dispute is to be referred (paragraph 13(3)). We assume that this and the procedure generally will not be proposed until October but may not become effective until April 2012. What, then, is the purpose of the reference to Schedule 3?</p> <p>Noting the comment in the right hand column, should the condition refer to the terms specified in the “determination” rather than “direction” since a “declaration” is another possible form of determination (paragraph 16(2)(a) of Schedule 3)?</p> <p>Given the existing request for determination for OMC access, how will OFCOM deal with that request?</p>	<p>OFCOM to clarify.</p> <p>OFCOM to clarify.</p> <p>OFCOM to clarify.</p>
C9.I.5	USPA 1.5	Is it correct that security requirements in paragraph (xiii) need not be published? Current requirements are in the public domain.	OFCOM to clarify.
C10.5	USPA 3.4	As this is an extremely important condition but one which is more honoured in the breach, we would ask OFCOM to clarify how it will address the manifold cases of unduly favourable treatment of Royal Mail’s retail business e.g. absence of third	OFCOM to address in due course.

		<p>party access terms for a nationwide first class service or deferred (third class equivalent) or printed matter or MailMedia or Cleanmail Advance service.</p> <p>While not something for the limited purposes of transposition of licence conditions into regulations, this is a crucial area for focus if there is to be proper equivalence.</p>	
C11	-	<p>We are concerned about this proposal. Given the s6 Communications Act 2003 duty to refrain from imposing conditions where possible, we are concerned that the removal of these conditions will limit OFCOM's future ability to pursue abuses of dominance.</p> <p>Many of the complaints to date have been founded wholly or partly on C11. While we note that OFCOM does have concurrency with the OFT under s.371 CA 2003 (by virtue of the amendment to s. 369(1) CA 2003), this is an area in which the market has no experience.</p> <p>We are not able to assess if the removal of these regulatory conditions does, indeed, have substantially the same effect as the existing C11. From an enforcement perspective, it may well be that relying on Competition legislation powers involves a number of additional (certainly different) procedural steps which would affect the ability to rely on the terms and which may lead to a different result. For one, it might give rise to claim for "follow on damages" which, although in our favour, is a difference from the current regime.</p> <p>The consultation is over a very short space of time and largely over the summer period and so it has not been possible to assess the impact of this, apparently significant, change.</p> <p>As there are concurrent powers, we would strongly urge OFCOM to retain conditions which mirror C11 and, in a less time-pressured way, consult on their possible removal at a later stage when the market has come to understand how</p>	<p>OFCOM to include C11 type powers as a USPA Condition.</p> <p>OFCOM to provide assurance that removing this condition will not preclude the application of regulatory conditions in the future to prevent abuses of market power.</p> <p>OFCOM to clarify the process for bringing a complaint based on competition</p>

		<p>concurrent powers can and are utilised.</p> <p>We note that, by not transposing C11, Parcelforce is no longer explicitly excluded from the remit of this condition. While concurrency would potentially bring Parcelforce into regulatory oversight, this is a change.</p> <p>It is assumed that the Schedule 12 amendments to CA 2003 s.369 will be effective from the date of vesting.</p>	<p>legislation and guarantee that those processes are to substantially the same effect as those which currently apply under C11.</p> <p>OFCOM to confirm the appointed day for Schedule 12, paragraph 62 coming into effect to grant concurrency.</p>
C12 (C5/C6 OLO licence)	-	We accept that these can be removed from the regulatory conditions.	
C13.3 / C13.4 C13.5	T 2.1 / T.2.2 / T2.3	<p>It is not clear why the requirement to have a compliance officer would be a Transitory Condition. See note earlier about timing of the first universal postal service order and its impact on a Transitory Condition (CP 4.8).</p> <p>Should the Compliance Officer not also have responsibility for Chapter 1 prohibition compliance (anti-competitive agreements or understandings) under s.2 Competition Act 1998?</p> <p>As OFCOM has the power to oversee such matters through concurrency, it makes</p>	OFCOM to clarify.



		sense for the Compliance Officer to be responsible for such compliance.	
C14.2(b) (C4.2(b) OLO)	CP 5.2	It is not clear how an Intermediary Agreement differs from a USP Access Agreement.	
COP Agreement	Annex 5	<p>Some tidying up would be useful but, given the limited time to make a modification under condition 14 (C4 OLO), this may not be possible.</p> <p>Title should reflect that this is the amended agreement (which does not require signature so long as the process in C14 (C4 OLO) is followed in which case it is deemed to be modified).</p> <p>Date of amendment needs to be noted.</p> <p>Recital A to refer to “Postal Operators” as Regulatory Conditions will apply to more than <u>Regulated</u> Postal Operators, even though only the latter need to sign up to the agreement.</p> <p>Formula Year – proposal to re-start at 2011?</p> <p>Affiliate definition to refer to Companies Act <u>2006</u>.</p> <p>Propose to remove definition of “Intermediary Agreement”</p> <p>Regulated Postal Operator definition to be located in alphabetical order.</p> <p>Royal Mail is <u>Limited</u> and has its registered office at 100 Victoria Embankment.</p> <p>Royal Mail Centres – will these be listed on OFCOM’s website?</p> <p>Clause 3.2 – refer to “Postal Operator”</p>	

		<p>Clause 5.8 – this should track the access window for injecting mail which is now 0730h to 1200h. Also consider this being possible at other times when access takes place e.g. early evening at the time of Premium handover.</p> <p>Clause 10.14 – defined term “Postal Operator”</p> <p>Clause 10.23 – in practice, how will Royal Mail know who is a Regulated Postal Operator in a post-licence regime, if there are no s48 notification regulations?</p> <p>Schedule 1 – this needs to be populated with details of all current licensees.</p> <p>Schedule 2, paragraph 5 (FC definition) and paragraph 6 (SC definition) should refer to second class public meter tariff. There was no difference in stamp and meter prices in 2006.</p> <p>Schedule 2, paragraph 7 - proposal to re-set prices for 2011, based on the existing formula.</p> <p>Schedule 2, paragraph 8 – Postcomm to confirm X.</p>	
POSTAL COMMON OPERATIONAL PROCEDURES AGREEMENT 2	POSTAL COMMON OPERATIONAL PROCEDURES AGREEMENT 2	Under “Access Agreement”, shouldn’t “Royal Mail Access Agreement” be “USP Access Agreement” or similar?	
C14.2(d) (C4.2(d) OLO)	CP 5.4	Why is the duty not to use information obtained when performing obligations under the Common Operational Procedures agreement only a transitory condition? See concern re. impact of first universal postal service order. This is an important	OFCOM to include this as a non-transitory

		<p>protection for all operators to ensure that customers' mail is repatriated efficiently. An equivalent provision is not contained in the agreement itself.</p> <p>Experience from the outbound cross-border sector over a decade ago (where sales people would attend when repatriating misdirected mail) highlights how a returns process can be abused.</p>	provision.
C14.2(e) (C4.2(e) OLO)	-	<p>This is more than an information exercise.</p> <p>Knowing that each operator has an agreement in place was considered an important regulatory safeguard for effective interoperability. E2E competition has been slow to develop but if, as hoped, it does develop in the years ahead, it will be more important than ever to make sure that effective means of repatriation are in place. Without this safeguard, it is highly likely that no agreement will be in place and customers will suffer as a result.</p> <p>The question as to how this will work (and can be checked) raises the question of how OFCOM will know who is providing postal services (notification under s.48 PSA 2011).</p>	<p>OFCEM to reinstate the obligation to provide a copy of the agreement with coordination role to be coordinated by the Secretary (currently Royal Mail – appointment to be re-affirmed by OFCEM).</p>
C14.3	CP 5.6	<p>As OFCEM must exercise all its powers in accordance with all applicable provisions of CA 2003 and PSA 2011, the words “and that such modification is consistent with its duties under s.3 of the Communications Act 2003” should be removed.</p> <p>Cross reference should be to CP [5.7 and 5.8]</p>	
C14 annex	CP 5/A1	Heading should be “Annex to CP 5”.	

		<p>Code Letter definition paragraph (b) – words “regulated postal operator” repeated.</p> <p>“Intermediary” – although in existing code, not clear how this differs from an “Access Party”.</p> <p>What will be OFCOM’s process for approving and issuing Code Identifiers?</p>	
C16	T3	It is not clear why the obligation to ensure adequate resources is a Transitory condition.	
C17 (OLO 7) / C18 (OLO 8) / C19	-	Agree that these can be removed in light of s55 PSA 2011 powers.	
C20.1 / C20.6(i)	CP 6.1 – 6.5	<p>We are pleased that this replicates the current limitation to regulated postal services only.</p> <p>“2. A regulated postal operator that generated turnover exceeding £10 million, in the preceding year beginning on 1 April, shall pay to Ofcom in any relevant year <del>such</del> (a) proportion as <del>Ofcom may specify</del> of the qualifying consumer expenses of the Council or the OFT.” Struck through wording is unnecessary because the proportion is defined in the following paragraph.</p>	
C21	T4.1	<p>If for whatever reason new price control provisions are not in place by 31 March 2012, this would leave a tremendous regulatory hiatus.</p> <p>Very importantly for access competitors, the margin squeeze protection would also fall away.</p> <p>The question about the impact of the first universal postal service order on Transitory conditions is raised above.</p>	<p>OFCOM should make this sunset clause conditional upon the establishment of new price control conditions.</p>

C21.5(c)	USPA 4.1	As stated above, removing certainty of any headroom protection after 31 March 2012 does not offer a substantially similar situation as in the current licence.	OFCOM should state that the provision continues until OFCOM otherwise determines.
21.5A.1	USPA 4.2	<p>We have concerns about this proposal. It does not have substantially the same effect as the existing licence.</p> <p>The method of allocating postcode sectors to zones depends, not upon costs but, upon delivery point and business address density in a postcode sector and, in London, on whether more than 50% of the volumes in a particular SSC are delivered to addresses within the M25 perimeter. The method was published on 1 July 2009. It is that method, rather than the zonal <u>costing</u> methodology which should be used for sector allocation.</p> <p>The last update of postal sector allocation to zones, in accordance with the July 2009 document, was to have been published in January for implementation in April 2011. It was to have been supported by an auditor's report submitted nine weeks before implementation. Therefore, it is this January 2011 data which should be published and referred to in the condition. This is without limitation to the duty to provide monthly updates, as per the policy.</p> <p>In the 4<sup>th</sup> March 2011 zonal costing document, Royal Mail confirmed that they would retain the existing system of sector allocation to zones so it is the 2009 document which is relevant for USPA 4.2.</p>	

21.5A.2	USPA 4.3	<p>The existing licence condition is about allocating each postcode sector to one of four zones. It is not about the <u>costing</u> of delivery in those postcode sectors. On 4<sup>th</sup> March 2011, Royal Mail published its decision on a revised method of allocating costs to zones. In that document, Royal Mail confirmed that it would adopt Option 2 for costing which “uses the current zonal definitions”. For these initial conditions, it would be appropriate, therefore, either to refer to that July 2009 document or to set out the agreed means by which postcode sectors are allocated (Jersey, Guernsey and Isle of Man are Rural Zone) within the condition itself and treat the issue of costing separately. Royal Mail has indicated a possible desired move, in the future, to zonal allocation based on costs (by “clustering” sectors according to cost in four zones) but this is not the current methodology and needs intense scrutiny:</p> <p><b>Zonal allocations</b></p> <ol style="list-style-type: none"> <li>4. 3 digit SSCs are allocated to the London zone where the relevant 3 digit SSCs are defined as “those that have more than 50 percent of their main volumes going to an area within the M25 boundary”<sup>2</sup>.</li> <li>5. Geographic Postcode sectors with business address density (number of business addresses as a percentage of the total) greater than 10% and delivery point density per km<sup>2</sup> greater than 500, or delivery point density per km<sup>2</sup> greater than 1000 are allocated to Urban GZone (excluding Postcode sectors allocated to London GZone).</li> <li>6. Geographic Postcode sectors with a delivery point density per km<sup>2</sup> between 100 and 1000 are allocated to Suburban GZone (excluding Postcode sectors allocated to the London and Urban GZones).</li> <li>7. Geographic Postcode sectors with a delivery point density per km<sup>2</sup> less than 100 are allocated to the Rural Gzone (excluding Postcode sectors allocated to the London, Urban and Suburban GZones).</li> <li>8. All “non-geographic” sectors have an infinite delivery point density (as they have no area in square kilometres) and are allocated to the London zone when in a London SSC, or otherwise to the Urban GZone.</li> </ol>	<p>OFCOM should separate into a different condition the method of assigning costs to delivery offices and then to Zones, so as not to conflate sector allocation with cost allocation.</p>
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C21.5A.3	USPA 4.4	Obligation to publish details of zonal pricing on RMW website changed to “its website”. RM has at least five websites. Why not specify the Group website?	OFCOM to explain
C21.5A.(4)(a) / C21.5A.(4)(a)(i)	USPA 4.5(a)	<p>We are not familiar with the 2009-10 paper referred to and there is no hyperlink to the Royal Mail document mentioned in footnote 30.</p> <p>The setting of zonal prices is of extreme importance to delivery competitors so any change to the existing licence terms needs to be clearly explained and understandable and must have the same effect as the existing licence conditions.</p> <p>Has Royal Mail Wholesale now deployed its own Mail Characteristics Survey? If so, should this not refer specifically to that MCS?</p> <p>Although not an issue for the setting of the initial conditions, as Royal Mail has abandoned its Wholesale Management System (WMS) - which had been described as a pre-requisite to providing zonal data and thus benefitting from a discount of up to 2% - the retention of the ability to discount zonal prices by 2% may need to be reviewed.</p>	
C21.5A.4(b)	USPA 4.5(b)	Does this formula not need to provide the calculation of GPs,t-1,z for Formula Year t=6, rather than t=5?	
C21.5A.7	-	Any future change to costing methodology should be subject to the same process as was previously used for a change. This provision should be reinstated.	
C21.5A.8	-	Agree that this should be deleted but on the basis that postcode sector allocation to zones is as per the established density criteria / London geography. As mentioned, the March 2011 costing methodology did not set out the detail for allocation of sectors to zones based upon costs.	

C21.5A.9	-	If there were to be a further change in the method of allocation, it should be subject to the constraints in C21.5A.9 so this wording should be replicated in the initial conditions in order to ensure the same effect as the existing licence condition. See comments on USPA 4.3 above.	
C21.5.10	-	The need for nine weeks notice for any change in allocation of sectors to zones would also need to apply to any allocation of zones based upon a new method of allocation, to replicate the existing licence condition. Notification of allocation using the current methodology is required under USPA 4.4.	
C21.5A.12	-	While OFCOM will be vested with the powers from 1 October, will Postcomm require this condition to be satisfied by 30 September and the data passed to OFCOM?	
C21.9	T4.11	As the proposal is that this condition falls away on 31 March 2012, what is the purpose of including this rather than referring to the existing prices?  Cross reference to “paragraph 10(e)” needs to be updated to T [4.12(e)].	
C21.12	-	It is crucial that OFCOM has this data and we would seek assurance that OFCOM <u>will</u> require this information to be provided.	
C21.13(b)	T 4.15(b)	Cross reference should be to Condition T[4.15(c)], rather than paragraph (c).	
C22 Access to the Postcode Address File	Omitted Proposed to be covered by a Direction issued on vesting (having essentially the same wording as C22)	The proposed Direction would cover only the wording from the 2006 Licence and not also the decisions made by Postcomm in 2007 and 2010 (published following reviews and consultations on the management of PAF). If these important decisions (which establish the PAF Advisory Board and its remit and which guide oversight of Royal Mail’s management of PAF) are not carried forward in the initial conditions they may become unenforceable.	Either a) Including in the proposed Direction all the necessary Postcomm decisions from 2007



			and 2010; or b) Stating explicitly in the Direction that the 2007 and 2010 decisions continue to apply.
-	CP7	CP7 is a new provision designed to implement the Directive, rather than replicate the licence conditions, but as such is acceptable.	
SI 2008/2355	CP8	As these regulations remain effective as a matter of law, why are there also regulatory conditions which duplicate them? Are these conditions not unnecessary? They are not currently in the licences.	
SI 2008/2267	CP9	To replicate the current situation, the redress scheme should be limited to consumer complaints about the provision of a <u>regulated</u> postal service. While a consumer complaint is defined as being limited to a consumer of regulated postal services, the complaint must also relate to regulated postal services.	
Common Operating Procedures Code of Practice 2.1	Annex to Condition 14 Common Operational Procedures – A Code of Practice 2.1	“regulated postal operator” is duplicated in Code Letter (b)	
Common Operating Procedures Code of Practice 3.2	Annex to Condition 14 Common Operational	Remaining references to “Royal Mail” seem wrong in context of other changes from “Royal Mail” to “Universal Service Provider”	

	Procedures – A Code of Practice 3.2		
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Mail Competition Forum  
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